

## IN THE MICHIGAN COURT OF APPEALS

### ORDER

**Re: People of MI v Tommy Rodriguez-Irizarry**

Docket No. **260528**

L.C. No. **2003-057703-FC**

William C. Whitbeck, Chief Judge, acting under MCR 7.203(F)(1) and 7.216(A)(10),  
orders:

The motion to waive fees is GRANTED for this case only.

The delayed application for leave to appeal filed January 27, 2005, is DISMISSED for lack of jurisdiction because appellant failed to file the application within 12 months of the November 13, 2003 judgment of sentence as required by MCR 7.205(F)(3). Furthermore, neither of the exceptions found in MCR 7.205(F)(4) were satisfied in this case. Because the motion for resentencing seeking additional jail credit was filed and decided long before the expiration of the 12-month period, it was irrelevant in calculating when the application for leave to appeal was due. The Court is aware that the trial court erroneously labeled the motion as a motion for relief from judgment when it was in fact not such a motion because the motion was filed within the 12 month period that an application for leave to appeal could have been filed. However, the trial court lacks the authority to enter any order that would have extended the time period for filing an application for leave to appeal and in this case the time period started when the judgment of sentence was entered.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

MAR 10 2005

Date

*Sandra Schultz Mengel*  
Chief Clerk